



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,438	01/22/2004	Pat Corry	243.1001US	5175
23280 7590 06/30/2008 Davidson, Davidson & Kappel, LLC 485 7th Avenue 14th Floor New York, NY 10018				
EXAMINER				
A. PHU DIEU TRAN				
ART UNIT		PAPER NUMBER		
3633				
MAIL DATE		DELIVERY MODE		
06/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,438

Applicant(s)

CORRY, PAT

Examiner

PHI D. A

Art Unit

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25, 27, 28 and 30-38 is/are pending in the application.
- 4a) Of the above claim(s) 17-23 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 24, 25, 27, 28, 30-33 and 35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

This applies to the limitation of “ constructed by injection molding” of claims 12-14

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 6, 12, 25, 30-31, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust in view of Meissner (6955011) and Smith (3046613).

Gust shows a protector for a window well comprising a hood formed in the shape of quarter sphere comprising a first and second portion, the second portion sloped to deflect precipitation from the first portion and the slits, the hood is transparent plastic, the hood being a single piece,

Gust does not show the first portion of the hood being perpendicular to a base and further comprising a plurality of slits angled through the first portion.

Meissner (figure 2) shows a protector for a window well comprising a hood comprising a first portion (where 32 is) and second portion (14), the first portion of the hood being perpendicular to a base(26), the second portion sloped to deflect precipitation from the first portion and the slits, the first portion is for ventilation of the window well.

Smith discloses slits for providing ventilation to an enclosed area.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's structure to show the first portion of the hood being perpendicular to a base as taught by Meissner in order to provide a cover that has a section which allows for ventilation and a plurality of slits angled through the first portion in order to provide for ease of ventilation as taught by Smith.

Per claim 31, Gust as modified shows all the claimed limitations except for a hinge coupled to the second portion.

Smith further discloses a hinge (figure 2 at 44) coupled to a second portion of the window well cover to enable selective opening and closing of the cover.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's modified structure to show a hinge coupled to the second portion since it enables selective opening and closing of the cover as taught by Smith.

Per claim 36, Gust as modified shows all the claimed limitations except for a hinge secured to the first outward rim flange.

Smith further discloses a hinge (figure 2 at 44) a hinge secured to the first outward rim flange of the window well cover to enable selective opening and closing of the cover.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's modified structure to show a hinge secured to the first outward rim flange since it enables selective opening and closing of the cover as taught by Smith.

3. Claims 2-4, 7-8, 13-16, 24, 32-33, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust in view of Meissner (6955011) and Smith (3046613).

Gust shows a protector for a window well comprising a hood formed in the shape of quarter sphere comprising a first and second portion, the second portion sloped to deflect precipitation from the first portion and the slits, a first outward rim flange (16) extending from the top of the hood for securing the hood to a foundation, a plurality of securing members (18), the hood being a single piece, the hood is transparent,

Gust does not show the first portion of the hood being perpendicular to a base and further comprising a plurality of slits angled through the first portion, a second outward rim flange extending from the bottom of the hood for covering the window well.

Meissner (figure 2) shows a protector for a window well comprising a hood comprising a first portion (where 32 is) and second portion (14), the first portion of the hood being perpendicular to a base(26), the second portion sloped to deflect precipitation from the first portion and the slits, the first portion is for ventilation of the window well, a second outward rim flange (the part of 26 that extends outward beyond part 32) extending from the bottom of the hood for covering the window well.

Smith discloses slits for providing ventilation to an enclosed area.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's structure to show the first portion of the hood being perpendicular to a base, a second outward rim flange extending from the bottom of the hood for covering the window well as taught by Meissner in order to provide a cover that has a section which allows for ventilation and proper support for the first portion, and a plurality of slits angled through the first portion in order to provide for ease of ventilation as taught by Smith.

Per claims 15-16, Gust as modified further shows the second outward rim flange covering the entire window well.

Per claims 32-33, 35, Gust as modified shows all the claimed limitations except for a hinge secured to the first outward rim flange.

Smith further discloses a hinge (figure 2 at 44) a hinge secured to the first outward rim flange of the window well cover to enable selective opening and closing of the cover.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's modified structure to show a hinge secured to the first outward rim flange since it enables selective opening and closing of the cover as taught by Smith.

4. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust in view of Meissner (6955011) and Smith (3046613) as applied to claim 2 or 3 above and further in view of Mackes (4330500).

Gust as modified shows all the claimed limitations except for the hood and flanges being plastic.

Mackes shows hood and flanges being made of plastics.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's modified structure to show hood and flanges being made of plastics as taught by Mackes because it would enable the creation of a light and rust resistance structure.

5. Claims 5, 27-28, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust in view of Meissner (6955011) and Smith (3046613) as applied claim 2 or 24 or 27 above and further in view of Mackes (4330500).

Gust shows all the claimed limitations except for the flanges and hood being a single piece.

Mackes discloses flanges and hood being a single piece (figures 1-3).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's modified structure to show the flanges and hood being a single piece as taught by Mackes since having structures made of one piece allows for easy one step assembly and less loose parts which may be lost.

Response to Arguments

6. Applicant's arguments with respect to claims 1-16, 24-25, 27-28, 30-33, 35-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Phi D A/
Examiner, Art Unit 3633

Phi Dicu Tran A

6/23/08